



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Release Number: **201643026**
Release Date: 10/21/2016

Date: July 17, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Form you must file:

Tax years:

UIL: 501.33-00

Dear :

This letter is our final determination that you don't qualify for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code (the Code). Recently, we sent you a proposed adverse determination in response to your application. The proposed adverse determination explained the facts, law, and basis for our conclusion, and it gave you 30 days to file a protest. Because we didn't receive a protest within the required 30 days, the proposed determination is now final.

Because you don't qualify as a tax-exempt organization under Section 501(c)(3) of the Code, donors can't deduct contributions to you under Section 170 of the Code. You must file federal income tax returns for the tax years listed at the top of this letter using the required form (also listed at the top of this letter) within 30 days of this letter unless you request an extension of time to file.

We'll make this final adverse determination letter and the proposed adverse determination letter available for public inspection (as required under Section 6110 of the Code) after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in the Notice 437 on how to notify us. If you agree with our deletions, you don't need to take any further action.

We'll also notify the appropriate state officials of our determination by sending them a copy of this final letter and the proposed determination letter (under Section 6104(c) of the Code). You should contact your state officials if you have questions about how this determination will affect your state responsibilities and requirements.

If you have questions about this letter, you can contact the person listed at the top of this letter. If you have questions about your federal income tax status and responsibilities, call our customer service number at 1-800-829-1040 (TTY 1-800-829-4933 for deaf or hard of hearing) or customer service for businesses at 1-800-829-4933.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosures:

Notice 437

Redacted Letter 4036, *Proposed Adverse Determination Under IRC Section 501(c)(3)*

Redacted Letter 4038, *Final Adverse Determination Under IRC Section 501(c)(3) - No Protest*



Department of the Treasury
Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Date: April 28, 2016

Employer ID number:

Contact person/ID number:

Contact telephone number:

Contact fax number:

Legend:

K = State
M = Name
N = Ensemble Name
P = Date
Q = Label Name
R = Year
S = Year
T = Name
v dollars = Amount
w dollars = Amount
x dollars = Amount
y dollars = Amount
z dollars = Amount

UIL:

501.33-00

Dear :

We considered your application for recognition of exemption from federal income tax under Section 501(a) of the Internal Revenue Code (the Code). Based on the information provided, we determined that you don't qualify for exemption under Section 501(c)(3) of the Code. This letter explains the basis for our conclusion. Please keep it for your records.

Issues

Are you operated exclusively for one or more exempt purposes described in section 501(c)(3) of the Code?
No, for the reasons stated below.

Do you operate for a public purpose instead of a substantial private purpose? No, for the reasons stated below.

commissioned works are either performed and/or recorded by you and are presented to the public through public performances or the release of recordings and/or scores.

The public presentation of music at concerts also makes up 25% of your activities and involves booking concert venues, coordinating with co-presenting organizations, hiring performers, marketing, making and printing concert programs, technical support, and site visits. Your website contains links to localized (non-telematic) works and a page for information on telematic works. You instruct those visiting your website to contact you for more information on presenting those projects and commissioning new work. You also have an ensemble, the N, that is one of your programs. It is an K city based experimental music large ensemble created by co-artistic directors M, conductor/composer, and T, bassist/composer. "The N large film/multimedia, and via the internet by T, M, and at times The N is the K site of the group. M, along with collaborating composers at times, writes solo and chamber works for N and musicians internationally. N has created an album and it was released under the Q label. The CD is available at concerts and on the Q website.

Your third activity, presenting educational programs and workshops, makes up 25% of your activities and includes the same activities as concert presentation. It may also include private lessons, master classes, and teaching residencies related to contemporary art music. Your website contains information about your private lessons. The lessons are open to all ages and ability levels and are offered in home in K or online internationally. Instrumental lessons include performance, improvisation, composition, listening, history, and theory. Music from M, N, and downtown K aesthetics are integrated into the pedagogy. Students are eligible for individual workshops with N musicians. You may provide scholarships to your education programs in the future based upon merit and financial need. These three activities have been active in the career of M since R.

Your final activity of documenting and distributing recordings of the music accounts for the remaining 25% of your activities. You create audio and/or video recordings of new and/or existing works of contemporary art music. This activity includes making recordings at concerts and recording studios, post production, manufacturing in physical and digital format, distribution, and archiving. The publication and distribution of music scores and writings includes making the scores and writings, editing, manufacturing in physical and digital format, distribution, and archiving. You provide recording equipment and production equipment and you hire individuals to record, master, edit and produce the recordings. You also produce printed publications such as scores of newly commissioned works. The manufacturing and distribution are new activities but the making, post production, editing, and archiving of recording, music scores, and writings have been active in the career of M since R. Any music that you distribute will be done so through your online store or at performances. You will not sell to any commercial retailers and any proceeds from your sales will be used for your future activities.

Your Artistic Director, M, in consultation with the Board of Directors, selects the works to document, commission, or distribute. You state that in the past you have documented, commissioned, and distributed works of other artists in addition to M and you will continue to do so. However, outside of the individuals listed as part of N, no one else's work was mentioned or documented. You will compensate any artists that you commission for a work for their time spent. Your works that you commission will include a recording of the performance of the work and you will own the copyrights to these recordings. Ownership of the copyright to the composition will be negotiated between you and the artist. You state that if the artist retains the rights to the composition, you and the public still benefit from the copyright to the recording of the work. You will pay the appropriate license fees at market rate for any instance in which you document and distribute works where you do not own the copyright to the composition. Any music you distribute will be distributed through your online store or at performances any proceeds from sales will be used for your future activities.

Your funding comes from private donations, government grants, private grants, corporate sponsorship, ticket sales, and merchandise sales. You also receive receipts from services performed for your education programs.

You compensate artists for artist fees and travel expenses associated with performances. You will compensate M and collaborating artists for artist fees, commissioning fees, merchandise fees, travel expenses, and conducting education sessions. You will also compensate individuals for performing administrative services. The compensation terms are negotiated based on professional experience, market rate, and the size of the total project budget. Additionally, you may contract with for-profit entities such as sound technicians and lighting technicians to assist in the production of artistic works. You did not provide any contracts or documentation between you and M, N, T, or any other artists regarding how fees were negotiated or established. In S, your professional fees consisted of approximately x dollars in artist fees paid to artists and musicians for participation in performances, y dollars for studio rental fees and fees paid to professionals who provided audio and video recording of the performances, z dollars in education fees paid to artists for giving lessons to students, v dollars for transportation fees, and w dollars in miscellaneous expenses such as production fees and bank fees. You expect your expenses in future years to be similar. You may also use your funds to produce the works of M and collaborating artists. The artists will maintain the intellectual property rights to the works.

Law

Section 501(c)(3) of the Internal Revenue Code provides, in part, for the exemption from federal income tax to organizations organized and operated exclusively for charitable, religious or educational purposes where no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Treas. Reg. Section 1.501(c)(3)-1(a)(1) provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Treas. Reg. Section 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized and operated exclusively for exempt purposes under Section 501(c)(3) of the Code unless it serves a public rather than a private interest. Thus, an organization must establish that it is not organized or operated for the benefit of private interests, such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Rev. Rul. 55-231, 1955-1 C.B. 72, held that an organization whose primary purpose was to promote the circulation of books of one of its incorporators and whose activities consisted of purchasing such works and making them available for public use, was not organized and operated exclusively for educational purposes within the meaning of section 501(c)(3).

Rev. Rul. 66-46, 1966-1 C.B. 133, held a nonprofit organization which is formed to promote public appreciation of group harmony singing and to educate its members and the general public in this type of music is exempt from Federal income tax under section 501 (c) (3) of the Internal Revenue Code of 1954.

Rev. Rul. 67-392, 1967-2 C.B. 191, held that a nonprofit organization which encourages and promotes the advancement of young musical artists by conducting weekly workshops, sponsoring public concerts by the artists, and securing paid engagements for the artists to improve their professional standing may be exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954. In carrying out its purposes the organization works with musicians and singers who are interested in acquiring concert experience. The organization conducts weekly workshop sessions for training artists in concert technique and also sponsors public concerts by the artists. These concerts are designed to introduce the artists to the public, to help them establish themselves professionally, and also to improve the musical appreciation of the public. A further activity of the organization is securing bookings for the artists at no charge.

Rev. Rul. 79-369, 1979-2 C.B. 226, held that an organization created to develop and promote an appreciation of contemporary symphonic and chamber music by recording and selling, primarily to educational institutions, new works of unrecognized composers as well as neglected works of more established composers was exempt from tax under section 501(c)(3) of the Code. Compositions to be recorded by the organization were selected by an editorial board. The members of the editorial board were appointed by the president of the organization. The board was comprised of recognized experts in the contemporary music field, none of whose works may be considered for recording. Members of the board are replaced every two years to insure selection of a broad range of compositional styles. Selections are made based upon the quality of the work rather than any potential for profit.

In Better Business Bureau of Washington D.C., Inc. v. United States, 326 U.S. 279 (1945), the Supreme Court held that the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes.

In Christian Manner International, Inc. v. Commissioner of Internal Revenue, 71 T.C. 661 (1979), the petitioner published and sold books that its founder wrote. The Tax Court found that the organization's actual purpose was to benefit the founder by publishing his books and promoting his theories. Even if the publication of his books in part furthered religious or educational purposes, petitioner would still not qualify for exemption under section 501(c)(3) because a substantial part of its activity benefited him personally.

In Wendy L. Parker Rehabilitation Foundation, Inc., Petitioner v. Commissioner, T.C. Memo. 1986-348, the tax court upheld the Service's position that a foundation formed to aid coma victims, including a family member of the founders, was not entitled to recognition of exemption. Approximately 30% of the organization's net income was expected to be distributed to aid the family coma victim. The court found that the family coma victim was a substantial beneficiary of the foundation's activities.

In Salvation Navy, Inc. v. Commissioner of Internal Revenue, T.C. Memo. 2002-275 (2002), the Tax Court found that one of the reasons why the organization did not qualify for exemption from federal income tax was because it could not prove that it was not organized to serve the private interests of its founder.

Application of law

You are not as described in section 501(c)(3) of the Code because you are not operated exclusively for exempt purposes. Treas. Reg. Section 1.501(c)(3)-1(a)(1). You were formed to manage and produce the artistic works of M and collaborating artists as well as to expose the public to the artistic work of M and collaborating artists. Per Treas. Reg. Section 1.501(c)(3)-1(c)(1), you are not operated exclusively for exempt purposes because you do not engage exclusively in activities that accomplish one or more exempt purposes. Your

activities are primarily for the benefit of M and artists who collaborate with M. Any educational activities are secondary to managing and supporting the works of M.

You have not established that you are not organized and operated for the benefit of the private interests of your Artistic Director, M. More than an insubstantial amount of your activities are directed at promoting the work and career of M. Per Treas. Reg. Section 1.501(c)(3)-1(d)(1)(ii) you are therefore not organized and operated exclusively for exempt purposes under section 501(c)(3) of the Code because you serve private rather than public interests.

You are like the organization in Rev. Rul. 79-369 in that you are trying to promote an appreciation of music. However, unlike the organization in Rev. Rul. 79-369, the works that you commission, record, and distribute are not selected by a board of recognized experts in the field whose work may not be considered for commissions or recording. As Artistic Director, M is responsible for your projects and artistic direction. Your Artistic Director, M, selects the works to document, commission, or distribute in consultation with the Board of Directors. M and collaborating artists will be compensated for artist fees, commissioning fees, merchandise fees, travel expenses, and conducting education sessions. Per your Bylaws, M, as your Artistic Director, is a Director of the organization during her term as Artistic Director and cannot be removed from office with or without cause. While you state that in the past you have documented, commissioned, and distributed works of other artists in addition to M and you will continue to do so, your website is focused on the works of M and N. You are therefore like the organization in Wendy L. Parker Rehabilitation Foundation, Inc., Petitioner v. Commissioner, in that you were primarily formed to promote and benefit one of your founders who is your Artistic Director and has control over your projects and direction.

You are similar to the organization in Rev. Rul. 55-231 in that you are not operated exclusively for educational purposes because you are purchasing your educational materials, your music, from one of your founders who is also your Artistic Director, and making it available to the public. Like the organization in Christian Manner International, Inc. v. Commissioner of Internal Revenue, your purpose is to mainly commission, record, and distribute the works of your Artistic Director. Although you indicated that you will also commission works from other artists, your organizing document clearly states that you were formed to manage and produce the artistic works of M and collaborating artists. The works include compositions, concerts, recordings, publications, and education workshops by M and collaborating artists. While collaborating artists are mentioned, your focus is on M, your Artistic Director. Although your music, in part, furthers an educational purpose, you do not qualify for exemption because a more than insubstantial part of your activities benefit M personally. As in Salvation Navy, Inc. v. Commissioner of Internal Revenue, you have not proven that you were not organized to serve the private interests of your Artistic Director, M.

Similar to above, while you are like the organization in Rev. Rul. 67-392 in that you promote the advancement of music by conducting educational programs and workshops and holding public performances, you are not focused on advancing young musical artists as in the Rev. Rul. The activities of the organization in Rev. Rul. 67-392 are geared at advancing young musical artists while your activities are geared toward advancing M, N, and T. You were formed to promote and manage M. You have an ensemble, the N, that is one of your programs and was created by co-artistic directors M, conductor/composer and T, bassist/composer. Your website is focused on promoting the activities of M and N, not various young artists trying to improve their professional standing.

Finally, while you are similar to the organization in Rev. Rul. 66-46 in that you are trying to increase the public's appreciation of the arts, you are mainly promoting the work of M, one of your founders and your

Artistic Director. Per Better Business Bureau of Washington D.C., Inc. v. United States, the presence of a single non-exempt purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly exempt purposes. Although many of your activities are educational in nature, you were formed for a non-exempt purpose, to manage and produce the artistic works of M and collaborating artists. Therefore, you do not qualify for exemption under section 501(c)(3) of the Code.

Your position

You stated that your performances further your exempt purpose by exposing the public to artistic works they would otherwise not be exposed to. You feel that the creation of new recordings and scores furthers your exempt purpose by documenting performances that the public can have access to and listen to in their own homes. You state that your educational programs and workshops further your exempt purpose by educating the public about the music and giving students the ability to learn about and perform the music and to become more culturally aware citizens. You commission new works from artists that you believe are capable of creating works of artistic merit that would benefit the public through their creation.

Our response to your position

You were formed to manage and produce the works of M and collaborating artists. A single substantial activity in furtherance of a non-exempt purpose disqualifies an organization from exemption, despite the presence of other exempt purposes. See Better Business Bureau v. United States, *supra*. While some of your activities are educational in nature, your activities that involve managing and promoting M, one of your founders and your Artistic Director, are not in furtherance of an exempt purpose. As Artistic Director, M may not be removed from office and is responsible for your projects and artistic direction. M, in consultation with the Board of Directors, selects the works to document, commission, or distribute. You will compensate any artists that you commission for a work for their time spent and artists may retain ownership of the copyright for the work. Ownership of the copyright to the composition will be negotiated between you and the artist. The benefit to M and the collaborating artists exceeds any public benefit derived from your activities. Since you operate for a substantial non-exempt purpose, you fail to qualify for exemption from federal income tax regardless of the number or importance of any truly exempt purposes.

Conclusion

Based on the information submitted, you are not operating exclusively for one or more purposes described in section 501(c)(3) of the Code. Even though some of your activities may be educational and charitable, you are primarily operating to benefit M and artists who collaborate with M. Therefore, you are not described in section 501(c)(3) of the Code.

If you don't agree

You have a right to file a protest if you don't agree with our proposed adverse determination. To do so, you must send a statement to us within 30 days of the date of this letter. The statement must include:

- Your name, address, employer identification number (EIN), and a daytime phone number
- A copy of this letter highlighting the findings you disagree with
- An explanation of why you disagree, including any supporting documents
- The law or authority, if any, you are relying on

- The signature of an officer, director, trustee, or other official who is authorized to sign for the organization, or your authorized representative
- One of the following declarations:

For an officer, director, trustee, or other official who is authorized to sign for the organization:

Under penalties of perjury, I declare that I examined this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

For authorized representatives:

Under penalties of perjury, I declare that I prepared this protest statement, including accompanying documents, and to the best of my knowledge and belief, the statement contains all relevant facts and such facts are true, correct, and complete.

Your representative (attorney, certified public accountant, or other individual enrolled to practice before the IRS) must file a Form 2848, *Power of Attorney and Declaration of Representative*, with us if he or she hasn't already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*.

We'll review your protest statement and decide if you provided a basis for us to reconsider our determination. If so, we'll continue to process your case considering the information you provided. If you haven't provided a basis for reconsideration, we'll forward your case to the Office of Appeals and notify you. You can find more information about the role of the Appeals Office in Publication 892, *How to Appeal an IRS Decision on Tax-Exempt Status*.

If you don't file a protest within 30 days, you can't seek a declaratory judgment in court at a later date because the law requires that you use the IRS administrative process first (Section 7428(b)(2) of the Code).

Where to send your protest

Please send your protest statement, Form 2848, if needed, and any supporting documents to the applicable address:

U.S. mail:

Internal Revenue Service
EO Determinations Quality Assurance
Room 7-008
P.O. Box 2508
Cincinnati, OH 45201

Street address for delivery service:

Internal Revenue Service
EO Determinations Quality Assurance
550 Main Street, Room 7-008
Cincinnati, OH 45202

You can also fax your statement and supporting documents to the fax number listed at the top of this letter. If you fax your statement, please contact the person listed at the top of this letter to confirm that he or she received it.

If you agree

If you agree with our proposed adverse determination, you don't need to do anything. If we don't hear from you within 30 days, we'll issue a final adverse determination letter. That letter will provide information on your income tax filing requirements.

You can find all forms and publications mentioned in this letter on our website at www.irs.gov/formspubs. If you have questions, you can contact the person listed at the top of this letter.

Sincerely,

Jeffrey I. Cooper
Director, Exempt Organizations
Rulings and Agreements

Enclosure:
Publication 892